

AN ORDINANCE creating Chapter 34 which
adopts a Tree Preservation Ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THE CITY OF
MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1: Murfreesboro City Code is hereby amended by
creating Chapter 34 which shall read as follows:

Sec. 34-1: PURPOSE AND INTENT.

- a) The purpose of this ordinance is to regulate the
planting, maintenance, and removal of all shade and
ornamental trees in public areas in the City of
Murfreesboro by and through:
 - 1. the establishment of a Tree Board;
 - 2. the establishment of the Beautification
Department as the agency prescribing
regulations, subject to prior approval of
the City Council, relating to the
planting, maintenance, and removal of trees
in public places;
 - 3. the provision for the issuing of permits
for the planting, maintenance, and removal
of trees in public places and new
developments;
 - 4. the provision for the pruning and removal
of trees on private property which endanger
public safety; and
 - 5. the provision for prescribing penalties for
violations of these regulations.
- b) The standards set out herein are hereby established
in order to encourage the planting of trees within
the city of Murfreesboro; to encourage the
maintenance and protection of existing trees; to
encourage the removal of hazardous, undesirable, or
diseased/pest-infested trees; and, to reduce air
pollution and promote clean air quality through
increased dust filtration, reduction of noise, heat
and glare.

SECTION 34-2. NAME.

This ordinance shall be known and may be cited as "The Tree Preservation Ordinance".

SECTION 34-3. DEFINITIONS.

- a) Arboricultural Specifications and Standards of Practice for the City of Murfreesboro (hereinafter, "Arboricultural Specifications Manual") is a manual prepared by the Beautification Department pursuant to this ordinance containing regulations and standards for the planting, maintenance, and removal of trees, shrubs, and other plants on city-owned property and public areas regulated herein.
- b) City Arborist: The City arborist, forester, tree warden, horticulturist, or other qualified designated official of the City of Murfreesboro assigned to carry out the enforcement of this ordinance.
- c) Municipality: The city limits or otherwise designated area unit of the city of Murfreesboro.
- d) Park: All public parks and all open areas owned or controlled by the city.
- e) Person: Any person, firm, partnership, association, corporation, company, or organization of any kind.
- f) Property Line: The outer edge of a street or highway right of way.
- g) Property Owner: The person or persons owning such property as shown by the Register's of Deeds office.
- h) Public Trees: All shade and/or ornamental trees now or hereafter growing on any street right of way or other public area where otherwise indicated. Large trees are designated as those having attained a height of 45 feet or more, medium trees are designated as those having attained a height of 30 to 45 feet, and small trees are designated as those having attained a height of under 30 feet.

- i) Tree Lawn: That part of a street or highway right of way not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

Sec. 34-4: TREE BOARD AND BEAUTIFICATION COMMISSION

a) Establishment of Tree Board

There shall be created a Board to be known and designated as "Tree Board" (hereinafter, "the board") and to be composed of five (5) citizens. All members of the board shall be citizens and residents of the City of Murfreesboro and shall be appointed by the Mayor with approval of the City Council. The initial terms shall be staggered with terms as follows: two (2) for four (4) years; one (1) for three (3) years; one (1) for two (2) years; and one (1) for one year. Terms thereafter shall be for four (4) years. All members of the Board shall serve without compensation. Vacancies occurring as the result of death, resignation, or otherwise shall be filled for the unexpired term in the same manner as the original appointments were made.

b) Duties and Responsibilities of Tree Board

It shall be the responsibility of the Tree Board to hear appeals and requests for variances.

c) Operation of the Tree Board

The Board shall choose its own officers, make its own rules and regulations subject to prior approval of the City Council, and keep a journal of its proceedings. A majority of the members shall constitute a quorum for the transaction of business.

d) Duties and Responsibilities of the Beautification Commission

It shall be the responsibility of the Beautification Commission to study, investigate, advise, and administer a written plan for the care, preservation, pruning, planting, replanting, removal

or disposition of trees and shrubs in parks, along streets, and in other public areas. Such plan shall be presented annually to the City Council, and upon acceptance and approval shall constitute the official comprehensive city-wide tree plan for the City of Murfreesboro. When requested by the City Council, the Beautification Commission shall consider, investigate, report findings, and make a recommendation upon any special matter or question falling within the scope of its work.

The Beautification Commission shall hold regular and special meetings for the purpose of discussing the subject of trees insofar as it relates to the City of Murfreesboro, and such meetings shall be open to the officers, and personnel of the City and all others who may be interested in the tree program.

Sec. 34-5.CITY ARBORIST.

a) Qualifications of the City Arborist

The City Arborist shall be a person skilled and trained in the science of arboriculture. He/she shall hold a college degree in Forestry, Urban Forestry, Horticulture or other closely related field or graduated from an accredited program or institute with a degree or certification in arboriculture. He/she must have a minimum of five (5) years practical experience in arboriculture, and possess no less than the International Society of Arboriculture's arborist certification. He/she shall maintain the arborist certification during his/her term of employment, and should the State of Tennessee implement a State Arborist Certification, then said person shall be required to be state certified and maintain such certification.

b) Duties of the City Arborist

The City Arborist shall have the authority to promulgate the rules and regulations of the Arboricultural Specifications and Standards of Practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees growing on the street right-of-way, city owned property, or other public sites regulated herein and shall direct, regulate and control the planting, maintenance, and removal of all trees growing now or

hereafter in any public area of the City of Murfreesboro regulated herein. He/she shall cause the provisions of this ordinance to be enforced. In his/her absence, these duties shall be the responsibility of a qualified alternate designated by the City Manager.

c) Authority of the City Arborist

1. Scope: The City Arborist shall have the authority and jurisdiction to regulate the planting, maintenance, and removal of trees on streets other publicly owned property and other public sites, regulated herein to insure safety and to preserve the aesthetics of such public sites.
2. Supervision: The City Arborist shall have the authority and it shall be his/her duty to supervise or inspect all work performed under a permit issued in accordance with the terms of this ordinance.
3. Condition of Permit: The City Arborist shall have the authority to affix reasonable conditions to the granting of a permit in accordance with the terms of this ordinance.
4. Master Street Tree Plan: The City Arborist shall have the authority to formulate a Master Street Tree Plan with the advice and subject to public hearing before the Beautification Commission and approval of the Beautification Commission and City Council. The Master Street Tree Plan shall specify the species of trees to be planted on each street or other city owned property. From and after the effective date of the Master Street Tree Plan, or any amendment thereof, all planting shall conform thereto.
 - A. The City Arborist shall consider all existing and future utility and environmental factors when recommending a specific species for each of the streets and other public sites owned by the city.
 - B. The City Arborist, with the approval of the Beautification Commission, shall have the authority to amend the Master Street Tree Plan at any time circumstances make it advisable, subject to a public hearing before the

Beautification Commission and approval of the City Council, except for minor amendments.

Sec. 34-6: PERMITS REQUIRED

a) Scope of Requirement

1. Persons Requiring Permits: No person other than the City Arborist, his/her designee, or a contractor employed by the Arborist, may perform any of the following acts without first obtaining a permit: Plant on city-owned property, or treat, prune, remove, or otherwise disturb any tree, shrub, or other plant located on city property, except that this provision shall not be construed to prohibit owners of property adjacent to city-owned property from watering without a permit, any tree, shrub, or other plants located on such city-owned property. No fee shall be charged for this permit, and nothing in this section shall be construed to exempt any person from the requirements of obtaining any additional permits as required by law.
2. Application for Permit: Applications for permits must be made not less than forty-eight (48) hours prior to the time the work is to be done. The person to whom the permit is issued shall abide by the Arboricultural Specifications and Standards of Practice. The applicant shall give "Notice of Intent to Excavate" to Tennessee One Call pursuant to T.C.A. Sec. 65-31-101 et seq.
3. Standards of Issuance: The permit shall be issued at no cost provided that the proposed work is in compliance with this ordinance and the proposed method and workmanship thereof are in conformity with the Arboricultural Specification and Standards of Practice. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner therein described. A violation of any of its terms shall render a permit null and void.
4. Notice of Completion: A notice of completion shall be provided within five (5) days of the completion date for purposes of inspecting the work.

b) Planting

1. Application Data: The application required herein shall state the number of trees or shrubs to be planted, the location, the species, cultivar or variety of each tree, the method of planting, and such other information which may reasonably be required in order to make a fair determination as to whether a permit should be issued.
2. Improper Planting: Whenever any tree or other planting shall be planted or set out so as to be in conflict with the provisions of this section, it shall be lawful for the City to remove, or cause to be removed, such offending trees or other planting, and the cost for the removal thereof shall be assessed to the owner, subject to the right to a due process hearing before the Tree Board.
3. No tree or shrub shall be planted in a City drainage ditch right-of-way.
4. No tree shall be planted within twelve (12) feet of the traveled portion of any major arterial or collector street with a speed limit of 40 mph or greater.

c) Maintenance

Application Data: The application required herein shall state the number and kinds of trees to be sprayed, fertilized, pruned, or otherwise preserved on public property; the type of treatment to be administered; the composition of the spray material to be applied; and such other information which may reasonably be required in order to make a fair determination as to whether a permit should be issued.

d) Tree Topping

Topping a tree is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. As a normal practice it shall be unlawful for any person, firm, public utility, or city department to top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the discretion of the City Arborist. Anyone desiring to prune a tree on public

property must obtain a permit.

e) Removal, Replanting, and Replacement

1. Whenever the city determines it necessary to remove a tree or trees from a treelawn in connection with the construction or repair of a sidewalk or the paving or widening of a street or highway used for vehicular traffic, the City shall replant such trees or replace them. In the event conditions prevent the replanting (i.e., loss or reduction of planting area, visibility, etc.) on a treelawn, the requirement for replanting shall be satisfied by the planting of an equivalent number of trees in other similar location(s).
2. No person or property owner shall remove a tree from the treelawn for the purpose of construction, or for any other reason, without first applying for and procuring a permit; and any tree or trees removed shall be replaced in accordance with the Arboricultural Specifications. Such replacement shall meet the standards set forth on the permit. The person or property owner shall bear the cost of removal (to include the stump), clean-up, and replacement of all trees removed.

Sec 34-7: ABUSE OR MUTILATION OF PUBLIC TREES

Unless specifically authorized by the City Arborist, no person shall intentionally damage, cut, carve, transplant, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree; allow any gaseous liquid or solid or impervious (such as concrete or asphalt) substance which is harmful to such trees and/or their root systems to come into contact with them; or set fire or permit any fire to burn when such fire or the heat thereof may injure any portion of the tree.

Sec. 34-8: PUBLIC NUISANCES

- a) Definitions: The following are hereby declared public nuisances under this ordinance:
 1. Any tree, shrub, or other plant, or portion thereof, whether located on city-owned property or on private property, which by reason of location or condition

constitutes an imminent danger to the health, safety, or welfare of the general public.

2. Any tree, shrub, or other plant, or portion thereof, whether located on city-owned property or on private property, which obstructs the free passage of pedestrian (7 feet minimum clearance) or vehicular traffic (15.5 feet minimum clearance) or which obstructs a street light or traffic sign.
3. Any tree, shrub, or other plant, or portion thereof, whether located on city-owned property or on private property, which dangerously obstructs the view in the "sight triangle" in violation of Murfreesboro City Code Section 34-10.

b) Right to Inspect

The officers, agents, servants and employees of the city have the authority to enter onto private property whereon there is located a tree, shrub, plant, or plant part that is reasonably suspected to be a public nuisance.

c) Abatement

The following are prescribed means of abating public nuisances under this ordinance:

1. Any public nuisance under the ordinance which is located on city-owned property shall be pruned, removed, or otherwise treated in whatever fashion as may be required to cause the abatement of the nuisance within a reasonable time after its discovery.
2. Any public nuisance under this ordinance which is located on private property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion may be required to cause the abatement of the nuisance. No property owner may be in violation of this provision unless and until the following requirements of notice have been satisfied:
 - A. The City shall cause a written notice to be personally served or sent by registered mail to the person to whom was sent the tax bill for the last preceding year.

- B. Such notice shall describe the kind of tree, shrub, or other plant or plant part which has been declared to be a public nuisance, its location on the property, and the reason for declaring it a nuisance.
- C. Such notice shall describe by legal description or by street the premises.
- D. Such notice shall state the actions that the property owner may undertake to abate the nuisance.
- E. Such notice shall require the elimination of the nuisance no less than thirty (30) days after the notice is delivered or sent to the person to whom was sent the tax bill for the last preceding year. However, the thirty (30) days may be reduced when there is imminent danger to the public.
- F. In the event the nuisance is not abated by the date specified in the notice, the City is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located.
- G. The property owner shall be notified of his/her right to a due process hearing before the Board. The running of the time limits shall be suspended from the time of the written request for a due process hearing until a decision is rendered by the Tree Board.

Tree
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request for
is rendered

Sec. 34-9: VIOLATION

The violation of any provision of this ordinance shall be and hereby is declared to be a misdemeanor, subject to a fine up to five hundred dollars and costs, in addition to any costs of corrective action incurred by the City as provided in this ordinance.

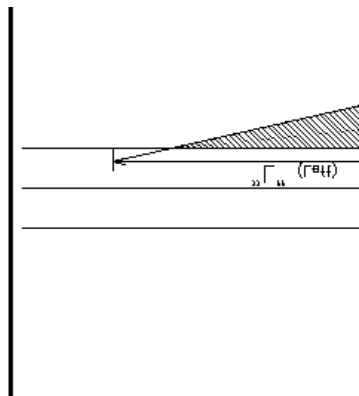
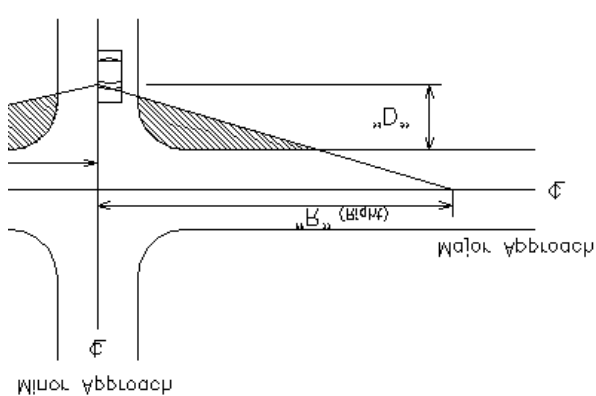
Sec. 34-10: SIGHT TRIANGLE

(a) Landscape Restrictions Sight Triangle Standards

A sight triangle is that area located at the

intersection of two public streets or a public street and private driveway through which an unobstructed view of approaching traffic is necessary for motorists. Except as permitted in this section, no landscaping or vegetation, or fence, structure, or object shall be included in a sight triangle in a subsection (e) landscape plan, nor shall any such landscaping or object be planted, erected or maintained within a sight triangle. A sight triangle shall be defined by the table and illustration below:

Sight triangle



The distance "D" shall measure twenty (20) feet and fifteen (15) feet from the edge of the nearest travel lane for a public street and private driveway,

respectively. The distance "L" shall be measured from the centerline of the minor approach to a point at the edge of the nearest travel lane. The distance "R" shall be measured from the centerline of the minor street to a point on the centerline of the major street approach.

Minimum Required Sight Distances for Different Posted Speed Limits

Posted Speed Limit ^A	Minimum Sight Distance (L and R)
25 mph	200 ft
30 mph	250 ft
35 mph	325 ft
40 mph	400 ft
45 mph	475 ft
50 mph	550 ft
55 mph	650 ft

^A Posted speed limit on the major approach. Except at a signalized

intersection, the speed limit of the approach from which the sight distance is being measured is ignored.

Sight triangles shall be measured from the minor leg of the intersection of two public streets where the minor approach shall be defined as that approach whose right-of-way is controlled by a stop sign and whose major approach is uncontrolled. At a signalized intersection of two public streets, sight triangles shall be measured for all approaches. For an intersection of a public street and private driveway, the sight distance is only measured from the private driveway.

(b) No landscaping object or plant material, except those meeting the requirements set forth below, shall be allowed within the sight triangle at an elevation greater than thirty (30) inches above the crown of pavement on the adjacent roadway.

1. Trees used in the sight triangle may exceed thirty (30) inches in height provided they have an acceptable minimum branching clearance of seven (7) feet from the ground to the first branch. Trees with a naturally high branching pattern are preferred, but trees with low branching patterns may be used if pruned to eliminate lower branches. Trees with normally low branching patterns that would be adversely affected by heavy pruning shall be unacceptable. Trees with descending branches such as weeping willow and weeping cherry shall be unacceptable.
2. Trees that normally develop a mature trunk with a diameter exceeding twelve (12) inches shall not be acceptable. A maximum trunk diameter of eight (8) inches shall be preferable. The estimated mature trunk size of the tree shall be considered, not the trunk size at the time of installation. Notwithstanding the foregoing, existing trees in the sight triangle with a trunk diameter greater than twelve (12) inches may remain unless the City Engineer, or the Engineer's designee, determines there is a threat to public safety.
3. When multiple trees are planted within the sight

triangle, they shall be planted in staggered positions to avoid a "picket fence" effect where visibility is reduced by a solid row of tree trunks.

Multiple trees located in the sight triangle shall be placed no closer than twenty (20) feet on-center from one another.

- (c) Notwithstanding the table and illustration provided in this section, the City Engineer or the Engineer's designee may recommend variances of this ordinance to the Board of Zoning Appeals, which shall have the authority to grant variances upon application by the owner. Any variance for landscaping shall take into account roadway conditions as they relate to traffic control devices, alignments, geometrics, or other unique circumstances that are supported by generally accepted engineering practices or principles, or actual on site studies.
- (d) No landscape plan shall be approved if the landscaping proposed for the intersection of a public street and a vehicular use area would create an unsafe obstruction in the opinion of the Urban Environmental Director or designee or the City Engineer or designee. No landscaping or vegetation, or fence, structure, or object, shall be planted, erected, or maintained by an owner at the intersection of a public street and a vehicular use area if it creates a safety hazard by obstructing the view of a motorist.
- (e) Notwithstanding the table and illustration, the City Engineer may recommend variances to the Tree Board, which shall have authority to grant variances. Any variance shall take into account roadway conditions appreciably varying from the roadways functional classification as listed in Table 1, as relates to speed, traffic control devices, alignment, geometrics or other unique circumstances that are supported by generally accepted engineering practices, or principles, or actual on site studies.
- (f) The provisions of this ordinance dealing with the sight triangle shall supersede any other ordinance, e.g., the landscape provisions of the zoning ordinance, to the contrary.
- (g) When acceptable trees are planted in the sight

triangle, consideration should be given to planting them in staggered positions to avoid a "picket fence" effect where visibility is reduced by a solid row of tree trunks.

- (h) Trees used in the sight triangle shall have a minimum branching clearance of six (6) feet from the ground to the first branch. Trees with a naturally high branching pattern are preferred, but trees with low branching may be pruned to eliminate lower branches. Trees with normally low branching patterns that would be adversely affected by heavy pruning shall be unacceptable. Trees with descending branches such as weeping willow and weeping cherry, shall not be acceptable.
- (i) Trunks on all trees in the sight triangle shall be of a diameter to allow easy visibility. Trees that develop a mature trunk greater than twelve (12) inches in diameter shall be unacceptable. A maximum trunk size of eight (8) inches shall be preferable. The estimated mature trunk size shall be considered, not the trunk size of the tree at the time of installation. Notwithstanding the foregoing, existing trees in the sight triangle with a diameter greater than twelve (12) inches are grandfathered unless the Tree Board determines there is a threat to public safety.
- (j) Trees to be located in the sight triangle shall be no closer than twenty (20) feet to each other within the sight triangle.

Sec. 34-11. APPEAL TO THE TREE BOARD

- (a) Any person aggrieved by any action or decision pursuant to this ordinance shall have the right to an appeal to the Tree Board provided written request is filed with the City Recorder within ten (10) working days of the action upon which the appeal is based.
- (b) The Tree Board shall have the authority to grant variances where the particular characteristics of the plant material and/or topography and/or construction of the intersection reasonably warrant a variance and the variance does not materially alter the intent of this ordinance. The procedure for requesting a variance from the Tree Board shall

be identical to the procedure for variances by the Board of Zoning Appeals as set forth in Appendix A-Zoning, Section 12, except for the time for requesting the appeal.

Sec. 34-10: SEVERABILITY

If any provision of this ordinance or application thereof to any person or circumstance is held invalid by any court, other provisions or applications of the ordinance which may be given effect without the invalid provision or application shall not be affected; and to this end, the provisions of this ordinance are declared to be severable.

Section 3. Section 28-17 of Murfreesboro City Code is amended by deleting same and substituting in lieu thereof the following:

Sec. 28-17. Injuring or destroying trees. If any person shall wilfully break, pull down, hurt or destroy any tree or other planting in violation of this ordinance which is now or may hereafter be planted on city property or public street right-of-way shall be guilty of a misdemeanor and subject to a fine up to five hundred dollars (\$500.00) for each tree or shrub.

Section 4: That this Ordinance take effect fifteen (15) days after its passage upon third and final reading, the public welfare and the welfare of the City requiring it.

PASSED AND SIGNED, this _____ day of _____,
1992.

MAYOR

ATTEST:

CITY RECORDER

The foregoing Ordinance approved
as to form, this the ____ day of

_____, 1992

City Attorney

a:O/92-0-4

rev. 9/28/92:ds

rev. 10/26/92/spc